IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3395 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUMERSINGH G YADAV

Versus

COMMANDANT

Appearance:

MR IS SUPEHIA for Petitioner

MR ND GOHIL, AGP for Respondent

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE H.H.MEHTA

Date of decision: 21/11/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

By this petition, invoking the provisions of Article 226 of the Constitution of India, the petitioner has assailed the order dated 1.7.88 recorded by the respondent authority, whereby, the petitioner was moved from the post of driver-constable to that of constable in regular police force, inter alia, contending that it tantamounts to reversion or transfer and the same suffers from the vice of not giving an opportunity of being heard to the petitioner.

The respondent authority has controverted the pleas raised in the petition and the reliefs sought therein by filing affidavit in reply. We have, also, heard the learned advocate Mr.Supehia for the petitioner and learned AGP Mr.Gohil for the respondent, dispassionately and have, also, examined the record, which is, unfortunately, not only sketchy, but also insufficient with regard to particulars requiring us to consider the question whether the post of driver-constable and the post of constable in regular police force could be said to be separate and different in view of the relevant rules. It is, also, difficult to find out from the petition as to whether the transfer of the petitioner from the posting of driver-constable to the posting of constable in the regular police force is, in any way, distinct and separate from one post to another. It is equally difficult to determine and adjudicate upon the issue as to whether the impugned order could be said to be, in any way, penal or visiting the petitioner with civil consequences requiring interference of this Court in exercise of its constitutional, prerogative, plenary, equitable, discretionary powers under Article 226 of the Constitution of India. Therefore, in our opinion, the petition, on its plain reading does not highlight important material aspects, including the initial appointment and subsequent order of transfer and other relevant, useful information and material. So, prima facie, one would feel, in such a situation, that the important question cannot be gone into and adjudicate upon.

It is, in this context, learned advocate Mr.Supehia, has argued only on the point that in case of such a transfer, as evidenced by the impugned order, though he may be in the same cadre, he is deprived of special allowance which he was getting at the time of passing of the impugned order while working as driver-constable. This submission does not take the petitioner's case any further. Mr.Supehia is unable to make any capital out of this submission for the obvious reason that the petitioner's

initial appointment was, as such, as Constable in regular police force in 1974. After getting some training, he was directed to work as Constable-driver and since special pay was attached to the post of Driver-constable, he started getting the special pay. However, it cannot be contended, for a moment that when the respondent competent authority transferred him, from the post of driver-constable to the posting of regular constable, he was, in absence of any other material circumstances on record, deprived of any right or is a victim of any violation of right. We, also, find ourselves unable to accept the contention even in case of a transfer in the same cadre, the opportunity of hearing is required to be given or otherwise, it would violate the provisions of the relevant rules read with Article 311 of the Constitution of India. Transfer, as such, is an incident of service and it is inherent in the employment concept. It neither invites nor entails any adverse ramification on the rights of an employee. On the contrary, since it is not a disputed fact that transfer is inevitable even in the cadre of constable, it is the duty of the employee to obey the command and order of the employer or the master. The order of transfer can only be, successfully, assailed, if it is shown to the satisfaction of the Court that it is tainted with malafides or arbitrariness, discriminatory or infracting the rules pertaining to transfer. No such case is ever raised, pleaded or argued. Obviously, therefore, the only conclusion we can safely, reach without any hesitation, at this juncture, is that the impugned order, since it is found to be in the facts of the present case, the order of transfer, it cannot be assailed merely on the ground that it is vitiated for want of affording an opportunity of hearing to be given to the affected employee-petitioner before us. Consequently, the only legal fate this petition deserves to be met is the rejection. Hence this petition shall stand rejected leaving the parties to bear their own costs, in the circumstances. Rule discharged. No costs.

(J.N.Bhatt, J.)

(H.H.Mehta, J.)

(vjn)